

Addressing the Challenges of High Power Broadcasts in Channel 51



A Framework for Voluntary Negotiations

- Relocation from Channel 51 on a permanent, or interim basis without altering rights to Channel 51 license.
- Reduction of effective radiated power, or other technical modification, on a relocated channel (or Channel 51).
- Relocation to a shared channel.
- Reduction of hours of operation, or temporary cessation of broadcast operations.
- Any combination, including assignment of license to assignee that would avail themselves of these options.



Statutory Support

Section 316(a)(1) – “Any station license . . . may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this Act . . . will be more fully complied with.”

Section 303(f) – The Commission may “Make such regulations . . . it may deem necessary to prevent interference between stations and to carry out the provisions of this Act” including “changes in the frequencies, authorized power, or in the times of operation of any station” with “the consent of the station licensee”

Section 312(g) – “If a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of the broadcast station expires at the end of that period, . . . except that the Commission may extend or reinstate such station license . . . for any . . . reason to promote equity and fairness.”



FCC Rules To Effectuate Policy

- **Section 1.3, 47 C.F.R. § 1.3:**

“The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown.”

- **Section 73.1635, 47 C.F.R. § 73.1635(a):**

“A special temporary authorization (STA) is the authority granted to a permittee or licensee to permit the operation of a broadcast facility for a limited period at a specified variance from the terms of the station authorization or requirements of the FCC rules applicable to the particular class of station.

- (a)(5) “An STA maybe granted for an initial period not to exceed 180 days. A limited number of extensions of such authorizations may be granted for additional periods not exceeding 180 days per extension.”
- Also see Section 1.3; 47 U.S.C. § § 303(f), 312(g), 316(a)(1).



700 MHz Precedent Over The Decade

2000 *Digital Only Decision* – 700 MHz Order

- *Service Rules for the 746-794 MHz Bands*, 15 FCC Rcd. 20845 (2000):

¶ 45: Commission will “consider agreements between new 700 MHz licensees and licensees of incumbent television stations that would compensate incumbents for converting to DTV-only transmission prior to the DTV transition.”

¶¶ 60-61: Commission presumption in favor:

- strengthens licensees in long run, enables new wireless services, overcomes temporary loss of over-the-air service during transition period.
- enable next generation wireless (or public safety or rural wireless service).
- presume if no loss of top-4 service, sole community commercial or NCETV licensee.
- still consider proposals for DTV-only where these conditions not met on case-by-case basis.

2011 *Lifting of Relocation Freeze –* – Voluntary Relocation for Channel 51

- *General Freeze on the Filing and Processing of Applications for Channel 51, Sixty Day Amendment Window*, 26 FCC Rcd. 11409 (2011):

– *In May*, FCC had frozen the acceptance of new rulemaking petitions to change channels. *Freeze*, 26 FCC Rcd. 7721 (2011).

– In August 2011, FCC permitted any party with a pending application for Channel 51 operation at the time to amend their applications to request an alternate channel assignment.

– Recent example: *Greenville, North Carolina*, Report and order, July 30, 2012 (amending Section 73.622(i) to substitute channel 26 for channel 61 in Greenville based on voluntary relocation agreement with Lower 700 MHz A Block licensees).



Media Rule Categories

Technical Rules – 47 C.F.R. 73.600 et seq.

- Rules that impact allocations, spacing, assignments and power operation; structured to prevent unacceptable interference and ensure sufficient service coverage – e.g., Sections 73.622 (assignments); 73.614 (minimum/maximum power); 73.682 (transmission standards); 73.1740 (operating schedules).

Public Interest Content Rules – Section 309, Part 73

- Rules that foster general public interest programming, children's programming, political programming, and the broadcast of other news and public affairs programming – e.g., Sections 73.671 (educational and informational needs of children); 73.1944 (“reasonable access” for Federal candidates).

Reporting, Filing and Public Access Rules – Part 73

- Rules that require stations to make reports and establish offices or files that are accessible to the public – e.g., Sections 73.1125 (main studio); 73.1943 (political file); 73.2080 (EEO program); 73.3526 (public inspection file).

Administrative Policy Concerns –

- The need to address associated rules or policies, including application of a renewal standard, the repacking of the broadcast spectrum post-reverse auction, and potential carriage issues.



Public Interest and Balance for Channel 51 Options

Voluntary Solution for Channels 51 and 700 MHz A Block Wireless Licensees

- Negotiations will result in voluntary agreements that meet the needs of broadcasters on Channel 51.
- Options will not cause unacceptable interference to any other broadcast licensee or effect their provision of service.

Will Eliminate Interference to 700 MHz A Build Challenges

- Acceptable options will free up 700 MHz A Block licensees to provide already-licensed new and enhanced next generation wireless services.
- Acceptable options will permit 700 MHz A Block licensees to proceed toward build-out requirements not currently possible under Channel 51 “exclusion zones.”



Public Interest and Balance for Channel 51 Options

The Options Affect a Limited Number of Stations and Broadcast Markets:

- Less than 30 stations currently remain assigned to Channel 51.
- Only 8 of these stations are top-4 network affiliates.
- At least 1/3 of these stations may be relocated with no loss of service.
- The NCETVs do not appear to be only NCETV service in market.
- With relocation options, perhaps as many as 75% of these stations would be presumed covered by *2000 DTV-Only* policy.
- Negotiations are likely to pursue least disruption of service options.



Public Interest and Balance for Channel 51 Options

The Options Will Have No Impact, or a Modest Impact, on Each Market.

- Waiver of the technical rules will not cause interference.
- Substantial over-the-air service still will be provided by the stations if possible, and if not, substantial over-the-air service will still be provided by other stations in the market.
- The stations still will have the option to provide service throughout the market via MVPDs and the Internet.

The Options Could Help Finance Experiments for Next Generation Broadcast Delivery Options.

- A number of these stations may choose to participate in the reverse auction, and eventually surrender their licenses in the auction; these voluntary options thus only would expedite the spectrum clearing process near the 700 MHz A Block.
- The Channel 51 options could provide stations with a test-bed and financing for transitional opportunities to their operation during the next decade including alternative business models for their delivery of programming and service.
- The Commission can selectively determine the level of reporting and availability to the public required by these stations.



Public Interest and Balance for Channel 51 Options

The Channel 51 Voluntary Options Will Have No or only a Modest Administrative Impact:

- Renewal Applications For A Very Limited Number of Stations:
 - Stations already have a substantial record approaching the current renewal cycle.
 - To the extent they continue to broadcast on a relocated channel, they will continue to be obligated to meet the public interest and programming rules.
 - The status of the channel 51 licensees in the reverse auction is likely to be determined well before the next renewal cycle commences eight years from now.
- Repacking:
 - Any interim relocation will be by voluntary agreement, with no enhanced rights to a channel position after the reverse auction, which will require relocation of channel 51 operation.
- MVPD Carriage Rights:
 - Half of the channel 51 licensees likely are “retransmission consent” stations.
 - The three-year election cycle will permit stations to consider their status during negotiations concerning the voluntary pursuit of an option.
 - As long as stations can deliver an acceptable signal to the MVPD, they are likely entitled to, or can negotiate carriage, on their respective MVPDs.

